



U.S. DEPARTMENT OF COMMERCE
BUREAU OF INDUSTRY AND SECURITY

UPDATE 2014
CONFERENCE ON EXPORT CONTROLS AND POLICY

Encryption Update

Information Technology Controls Division



Encryption Update

- Wassenaar Control List amendments –
– December 2013
- Classification Issues
- Encryption Licensing Arrangements
- Deemed exports to Country Group E:1 foreign
nationals



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Category 5 part 2 Wassenaar Amendments (1 of 2)

- “executable software” added to paragraph b of Note 3 (Mass Market Note)
 - Component of existing “mass market” product
 - Limited to software from an existing hardware component meeting Note 3

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Category 5 part 2 Wassenaar Amendments (2 of 2)

- Decontrol note added for certain Radio Access Network equipment designed for civil use (new decontrol note k.)
 - residential small cell equipment with radio frequency output power not more than 20 dBm and up to 16 concurrent users

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Category 4 and 5 part 1 Wassenaar Amendments

- Category 4 – new entries control delivery systems for “intrusion software”
- Category 5 part 1 – new entry controls Internet monitoring systems
- U.S. implementation under discussion

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Classification Issues

- An end item’s classification may be different from the classification of its components
 - Interpretation 2 (section 770.2(b)(2) of the EAR)
- “Network infrastructure”
 - Encryption of voice/video/data plus performance parameters in section 740.17(b)(2)

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Encryption Licensing Arrangements

- Extension of existing ELAs rather than renewal
- Scope of single country ELAs for “more sensitive” government end users
 - Russia – exclusion of military, intelligence, security law enforcement and public safety agencies
 - China – exclusion of police & law enforcement, military, intelligence and security agencies + import/export agencies, judiciary, port authority, prisons and public safety agencies



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Deemed Export Licenses for Country Group E:1 Foreign Nationals

- Introduction
- License Requirements / Licensing Policy
- Review factors
- License validity/conditions
- Deemed Reexport Guidance



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Introduction

- Mostly information technology / cyber / communications-related licenses
- License applications submitted by employers
- Increase over last few years
 - 2011 = 180 license applications for Iranian FNs
 - 2013 = 234
- 2013: 170 approved; 14 denied; 50 RWA'd
- Mostly students in United States



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License Requirements

- License required for release of software and technology controlled for AT, NS, CB, MT, NP reasons to E:1 foreign national
- ECCN 5D002/5D992 software excluded (section 743.2(b)(9))



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Licensing Policy

- General policy of approval with case-by-case risk assessment regarding access to technology that would contribute to E:1 government:
 - offensive or defensive cyber capabilities
 - monitoring/suppression of domestic dissent through electronic means
 - programs not supported by U.S.

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Review Factors (1 of 2)

- **Technology/software to be released**
 - Relevance to capabilities of concern
 - Scope of technology/software
- **Background of foreign national**
 - Connections to E:1 government
 - Military service
 - Government funded education

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Review Factors (2 of 2)

- **Background of foreign national (cont'd.)**
 - Connections to/work experience with E:1 institutions, persons, companies of concern
 - Specially designated foreign nationals
 - Government-sponsored companies/organizations
 - Family members in United States
 - Interest in permanent residency/ intention to return to E:1 country

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Validity and Conditions

- 5-year validity with 2-year reporting requirement
- Record-keeping re: visa and employment status
- Technology control plan

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Deemed Reexport Guidance

- Posted on BIS website October 31, 2013
- Release to permanent third-country national employees authorized if:
 - Technology control plan
 - Screening process (new Country Group D:5)
 - Non-disclosure agreement
 - Plans and records available to BIS upon request

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Questions?

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Thank you

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